

Tab F
Excerpts of Deposition of
Robin I. Nixon (3/24/06)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -
4 ROBIN NIXON,)
5 Plaintiff,)
6 vs.) No. 05-101ERIE
7 NORFOLK SOUTHERN CORPORATION and)
8 NORFOLK SOUTHERN RAILWAY COMPANY,)
9 INC.,)
10 Defendants.)

11 Deposition of ROBIN NIXON
12 Friday, March 24, 2006

13 - - -
14 The deposition of ROBIN NIXON, the plaintiff
15 herein, called as a witness by the defendants,
16 pursuant to notice and the Federal Rules of Civil
17 Procedure pertaining to the taking of depositions,
18 taken before me, the undersigned, Lance E. Hannaford,
19 a Notary Public in and for the Commonwealth of
20 Pennsylvania, at the offices of MacDonald Illig Jones
21 & Britton, 100 State Street, Suite 700, Erie,
22 Pennsylvania 16507, commencing at 9:35 o'clock a.m.,
23 the day and date above set forth.

24 - - -
25 COMPUTER-AIDED TRANSCRIPTION BY
MORSE, GANTVERG & HODGE, INC.
PITTSBURGH, PENNSYLVANIA
412-281-0189
- - -

1 ROBIN NIXON

2 The plaintiff herein, called as a witness by the
3 defendants, having been first duly sworn, as
4 hereinafter certified, was deposed and said as
5 follows:

6 EXAMINATION

7 BY MR. TAFT:

8 Q Mr. Nixon, would you state your full name
9 and home address, please?

10 A My name is Robin Ishmael Peter Nixon.
11 I live at 3603 Peach Street.

12 Q That would be Erie.
13 Correct?

14 A Erie, PA 16508.

15 Q Mr. Nixon, my name is Roger Taft.

16 I am representing the defendants in this
17 case, Norfolk Southern Corporation and Norfolk
18 Southern Railway Company.

19 This, of course, is a lawsuit that you
20 filed as a result of an accident that occurred on
21 April 27, 1997 somewhere in the vicinity of West 19th
22 Street and Sassafras Street.

23 You understand that?

24 A Yes.

25 I do.

1 A Yes.

2 MR. SOLYMOSI: If I may before we start,
3 how do you want to handle any potential
4 objections?

5 MR. TAFT: Well, the only objections under
6 the federal rules that you ought to raise are
7 objections as to the form of the questions.

8 It will be governed by the Federal Rules of
9 Civil Procedure.

10 MR. SOLYMOSI: Okay.

11 BY MR. TAFT:

12 Q Mr. Nixon, what is your age and date of
13 birth?

14 A My age is 21.

15 Date of birth is 12-03-84.

16 Q And are you married?

17 A No.

18 I am not.

19 Q Ever been married?

20 A No.

21 I haven't.

22 Q Do you reside with anyone at 3603 Peach
23 Street in Erie, Pennsylvania?

24 A I live with my parents.

25 Q What are their names?

1 Q And this was after about four or five
2 months of employment?

3 A Yes.

4 Q And you haven't held any employment since?

5 A No.

6 I haven't.

7 Q Mr. Nixon, let me direct your attention to
8 the time frame of April 1997.

9 I am focusing -- or going to be focusing on
10 the accident that provides the basis for your lawsuit.

11 As of April of 1997, where were you
12 attending school?

13 A I was attending school at Glenwood
14 Elementary.

15 Q Do you recall what grade you were in?

16 A 6th.

17 Q You would have turned 12 on December 3 --
18 yes. 12 on December 3, 1996.

19 Correct?

20 A Correct.

21 Q As of April of 1997, where did you reside?

22 A 3603 Peach Street.

23 Q Same location?

24 A Yes.

25 Q How long have you lived at that address?

1 A Since '95.

2 Q Where did you reside before 1995?

3 A 145 East 22nd Street.

4 Q Do you recall how long you lived at the 145
5 East 22nd Street address?

6 A No.

7 I can't recall exactly.

8 Q As of April of 1997, when you were living
9 at your 3603 Peach Street address, who else was living
10 there?

11 A Both my parents.

12 My older brother.

13 Q That would be Ervin Nixon, Jr., correct?

14 A Correct.

15 Q Where is Glenwood Elementary School
16 located?

17 A 35th and Peach.

18 Q Not too far from your house?

19 A No.

20 Q Let me direct your attention, now, to April
21 27th, 1997.

22 The date of the accident.

23 I am getting that date from the police
24 accident report.

25 According to that report, the accident

1 occurred on a Sunday.

2 Some time around 12:24 p.m.

3 Does that sound right to you?

4 A Yes.

5 It does.

6 Q What had you been doing during the morning
7 of Sunday, April 27, 1997 before this accident?

8 A I met up with a friend.

9 We were playing basketball.

10 Q Who was the friend?

11 A Christopher Houston.

12 Q How does he spell his last name?

13 A I am not exactly sure.

14 Q Sounds like Houston, like Houston, Texas?

15 A Yes.

16 Q How did you know Mr. Houston?

17 A From school.

18 Q Did he go to Glenwood Elementary as well?

19 A Yes.

20 He did.

21 Q Was he in 6th grade with you?

22 A Yes.

23 He was.

24 Q Was he in the same class?

25 A No.

1 from the south side of 19th Street, where the
2 playground was, to the north side of 19th Street?

3 A No.

4 Along 19th Street would be a better way to
5 say it.

6 Q When you say "along".

7 Going in an east or west direction?

8 A East.

Could I take a break now?

10 Q Sure.

11 (Recess taken.)

12 BY MR. TAFT:

13 Q Where we left off, I had asked you what you
14 and Chris Houston did after leaving the playground.

15 You were playing basketball.

16 And you said you went across, I think you
17 said across 19th Street.

18 A Along 19th Street.

19 Q Excuse me.

20 I think you told me you were riding east on
21 19th Street?

22 A Yes.

23 Q Now, did the two of you go to any Rite-Aid
24 or other type of drug store before the accident?

25 A I can't recall.

1 Q You do recall riding east on 19th Street?

2 A Yes.

3 Q Did Chris have his basketball?

4 A No.

5 He didn't.

6 Q What happened to his basketball?

7 A I can't recall.

8 Q Did you tell me earlier that he had a

9 basketball?

10 A Yes.

11 He did.

12 Q And he brought the basketball with him to

13 the playground?

14 A Yes.

15 He did.

16 Q But you are saying by the time the two of

17 you left the playground, he no longer had the

18 basketball?

19 A No.

20 He didn't have it at the time.

21 Q What happened to it?

22 A I don't recall what happened to it.

23 Q Did he lose it?

24 A He could have left it at the playground.

25 I don't recall.

1 Q So what you recall is the two of you riding
2 east on 19th Street on your bicycles.

3 A Yes.

4 Q Do you know the streets Sassafras and
5 Myrtle, where they intersect with West 19th Street?

6 A Yes.

7 I know of the streets.

8 Q Had you ever ridden your bicycle on 19th
9 Street before?

10 A Yes.

11 I have.

12 Q On what occasions had you ridden on 19th
13 Street before?

14 A Just to go down to the playground.

15 Q The same playground?

16 A Yes.

17 Q And how many times have you been there
18 riding your bike on West 19th Street prior to April
19 27th, 1997, the date of the accident?

20 A I think once or twice.

21 Q At that point in time, 19th Street was a
22 city street that had a single set of railroad tracks
23 running down the middle.

24 Is that correct?

25 A Yes.

1 Q And on both sides of the railroad tracks,
2 there was a paved surface for trucks and cars and
3 other vehicles to travel on?

4 A Yes.

5 Q It was used as a city street, was it not?

6 A Yes.

7 It was.

8 Q And when you and Chris Houston were
9 traveling east on your bicycles on 19th Street, were
10 you on the north side of the tracks, on the lake side,
11 or the south side?

12 A South side.

13 Q And again, to be clear on directions, south
14 side would be the side away from the lake?

15 A It would be the north side then.

16 Q That is what I want to make sure we are
17 right on our directions.

18 A Right. Thank you.

19 Q So to correct that, you and Chris Houston
20 were riding your bicycles on the north side of the
21 railroad tracks?

22 A That would be correct.

23 Q And you were going in an easterly direction
24 toward State Street?

25 A Yes.

1 Q Was there a train passing on the tracks as
2 you and Chris were riding your bicycles?

3 A Yes.

4 There was.

5 Q At what point in time did you first see the
6 train?

7 A I don't recall exactly.

8 Q Okay.

9 Was there a point in time where you grabbed
10 on to the train as it was passing you?

11 A Yes.

12 There was.

13 Q How fast was this train traveling, when you
14 grabbed on to it?

15 A I don't know exactly.

16 Q Was it going fast or slow?

17 A It was going kind of fast.

18 Q But you can't estimate the speed?

19 A No.

20 I can't.

21 Q What direction was the train traveling?

22 A Traveling east.

23 Q Same direction you were?

24 A Yes.

25 Q And you said there was a point in time

1 where you grabbed on to the train, as it was passing?

2 A Yes.

3 I did.

4 Q And do you remember the types of train cars
5 that were on that train, as it was going by?

6 A No.

7 Q You don't recall if they were coal cars or
8 boxcars or some other kind of cars?

9 A No.

10 I don't exactly.

11 Q I asked because the records of that train
12 show it was called a coal train.

13 All of the cars in that train were coal
14 hopper cars.

15 You don't recall that?

16 A No.

17 Q What did you grab on to on that train, as
18 it was going past you?

19 A There was a handle on one of the boxcars.

20 Q Or coal cars.

21 A Coal cars.

22 Q We will say cars, if you don't recall what
23 type it was.

24 It was a handle; is that right?

25 A That's right.

1 Q In other words, if we were to look at the
2 side of that rail car and we were -- and if we are on
3 the north side of the train, looking at the train as
4 it is going past from right to left, from west to
5 east, there would have been a handle somewhere at the
6 right end or rear end of that rail car.

7 A Correct.

8 Q And do you recall if there was anything
9 else besides a handle?

10 A No.

11 I don't.

12 Q But this was some kind of handle.

13 Would you describe it?

14 A No.

15 I can't exactly describe it.

16 Q Did it appear to be a handle that someone
17 who wanted to climb up on to the car would use to grab
18 on to to climb on to the car?

19 A I don't know exactly.

20 Q You don't know what it was used for, but
21 there was a handle there; is that right?

22 A Yes.

23 Q And was the handle on the side of the car
24 but toward the rear of the car?

25 A Yes.

1 Q It wasn't on the back end of the car, it
2 was on the side of the car at the rear; is that right?

3 A That's right.

4 Q Do you recall where you were located on
5 19th Street, when you first grabbed on to that handle
6 of the train moving eastbound?

7 A No.

8 I do not.

9 Q Do you understand that if you look at the
10 intersecting streets to 19th Street, and I am saying
11 going west from State, the first intersecting street
12 is Peach Street.

13 Is that correct?

14 From State Street?

15 A Yes.

16 That's correct.

17 Q And then if you go one block further west,
18 you are at Sassafras Street.

19 Is that correct?

20 A That's correct.

21 Q If you go one block further west, you are
22 at Myrtle Street.

23 Is that correct?

24 A That's correct.

25 Q Does that help you at all recall the point

1 where you first grabbed on to the rail car?

2 A No.

3 It doesn't.

4 Q How long did you continue to hold on to
5 that moving train?

6 How far did you go?

7 A I don't remember exactly.

8 Q Do you remember approximately?

9 A Approximately one and a half city blocks.

10 Q One and a half?

11 A Yes.

12 Q So let me ask the next question. Because I
13 am trying to place all of this.

14 We know from the police accident report and
15 perhaps from your own recollection, that the accident,
16 where you were injured, occurred somewhere in the
17 vicinity of Sassafras Street and 19th Street; is that
18 correct?

19 A That's correct.

20 Q And one block to the west would be Myrtle
21 Street.

22 Right?

23 A Correct.

24 Q So if you were holding on to the train,
25 again, approximately for a block and a half, you would

1 have grabbed on to that train somewhere to the west of
2 Myrtle Street, to the best of your recollection?

3 A Correct.

4 Q Now, when you grabbed on to the train, you
5 said that you were holding on to a handle.

6 Is that right?

7 A That's right.

8 Q What hand were you using to hold on to the
9 handle?

10 A My right hand.

11 Q And you were on your bicycle.

12 Correct?

13 A Correct.

14 Q What were you doing with your left hand?

15 A Holding the handlebars.

16 Q The left handlebar?

17 A Left handlebar.

18 Q So as I understand it, you grabbed on to
19 the handle near the rear of this rail car with your
20 right hand, and you had your left hand on your left
21 handlebar; is that right?

22 A Correct.

23 Q I asked you earlier what kind of bicycle
24 you had.

25 You said you couldn't remember for sure.

1 But I want to try to narrow that down a
2 little bit.

3 How many speeds did the bicycle have?

4 A It wasn't a mountain bike.

5 Q You have mountain bikes with a gearshift,
6 right?

7 A Right.

8 Q You have road racing bikes that have the
9 real skinny tires and funny looking handlebars that
10 bend down with a lot of gears.

11 A Yes.

12 Q It was that kind of bike?

13 A No.

14 It would be something of an 18 or 20 inch
15 bike.

16 Q Basically having a single gear, so to speak?

17 A Correct.

18 Q To go faster, you had to pedal faster?

19 A Correct.

20 Q You weren't shifting any gears?

21 A No.

22 Q And to put the brakes on you reversed the
23 pedals and pressed down?

24 A No.

25 Q You had hand brakes?

1 A Hand brakes.

2 Q That helps.

3 As you were being pulled along, holding on
4 to the handle with your right hand, left hand on the
5 left handlebar of your bike, where was Mr. Houston?

6 A In front of me.

7 Q Was he riding his bike in front of you? Or
8 was he also holding on to the train?

9 A He was also holding on to the train.

10 Q When did Mr. Houston first grab on to the
11 train?

12 A Right before me.

13 Q Now, you were holding on to a handle near
14 the rear of one of these rail cars.

15 Correct?

16 A Correct.

17 Q What was Mr. Houston holding on to?

18 A I am not sure.

19 Because he was two cars ahead of me.

20 So I couldn't exactly see what he was
21 holding on to.

22 Q He was, to your best recollection, two rail
23 cars farther toward the head end or front end of the
24 train than you were?

25 A Correct.

1 Q But you could see him holding on to
2 something?

3 A Correct.

4 Q Could have been a handle on that car or
5 something else?

6 A Correct.

7 Q You don't know?

8 A I don't know.

9 Q To your best recollection, when did he
10 first grab on to the train?

11 A Right before me.

12 Q Am I correct in understanding that these
13 rail cars, that you and Mr. Houston were holding on
14 to, starting somewhere, to your best recollection, to
15 the west of Myrtle Street, were toward the rear of the
16 train?

17 A I am not exactly sure.

18 Q You don't recall one way or the other; is
19 that right?

20 A Right.

21 Q At any time, did you see the locomotive of
22 that train go past?

23 A I am not exactly sure.

24 Q You do remember seeing the train itself
25 moving past.

1 A Yes.

2 I do.

3 Q But you don't recall seeing the locomotives
4 of the train?

5 A No.

6 I don't recall.

7 Q At any point in time before you had your
8 accident, did Mr. Houston let go of the train?

9 A No.

10 Q So your best recollection is that
11 Mr. Houston was continuing to hold on to this rail car
12 two cars ahead of you.

13 And continued to hold on the entire time up
14 until you fell?

15 A Correct.

16 Q Mr. Nixon, before this accident, had your
17 parents ever told you to stay away from moving trains?

18 A No.

19 They hadn't.

20 Q They never told you once that you ought to
21 stay away from a moving train?

22 A No.

23 They hadn't.

24 Q Did anybody in school ever tell you to stay
25 away from moving trains, they are dangerous?

1 Q With a single set of railroad tracks
2 running down the middle of West 19th Street?

3 A Correct.

4 Q Now, in your earlier testimony, you were
5 stating that to the best of your recollection, you had
6 grabbed on to an eastbound train on these 19th Street
7 tracks, somewhere to the west of Myrtle Street.

8 A Correct.

9 Q And you also said that Mr. Houston had
10 grabbed on to the train two cars ahead of you.

11 And both of you were being pulled along by
12 the train.

13 A Correct.

14 Q And you also testified that both of you
15 would have been on the north side or the lake side of
16 the train, as it was traveling eastbound.

17 A Correct.

18 Q And you further testified that Mr. Nixon
19 continued being pulled along by the train even after
20 you fell, and you had your accident?

21 A Correct.

22 Q Now, using this diagram, where,
23 approximately, did you fall off your bicycle?

24 You are putting an X again on the north
25 side of the tracks.

1 A Correct.

2 Q Somewhere in the middle of the intersection
3 with Sassafras Street?

4 A Correct.

5 Q Is that the location where you actually
6 fell to the ground off your bike?

7 A I am not exactly sure.

8 Q But it was somewhere in that vicinity?

9 A Correct.

10 Q Do you recall why it was you fell off your
11 bike at that location?

12 A No.

13 I do not.

14 Q Do you know whether you -- strike that.

15 Do you recall how it was you fell off your
16 bike?

17 A No.

18 I do not.

19 Q In other words, all you recall is holding
20 on to this grab iron, I will call it, toward the rear
21 of a -- one of the rail cars.

22 And the next thing you knew, you were down?

23 A Correct.

24 Q And you don't know why it was you went
25 down?

1 Q What was it your foot was stuck in, that
2 you couldn't pull it out?

3 A Between the track and the cement where the
4 wheel goes over.

5 Q Again, to clarify that, you have the two
6 sets of rails.

7 A Correct.

8 Q The tracks where the train was running on.
9 Is that right?

10 A Yes.

11 Q And West 19th Street you told me was a city
12 street that traffic, trucks and cars and other
13 vehicles traveled on east and west.

14 Is that right?

15 A Yes.

16 Q Was the surface of West 19th Street an
17 asphalt surface?

18 A Correct.

19 Q Are you telling me that your foot, your
20 left foot was caught somewhere between the rail on
21 which the train was running and the end of the
22 asphalt?

23 A To the best of my knowledge, yes.

24 Q So you were able to move your body, all of
25 your body back outside from under the train.

1 A To the best of my knowledge.

2 Yes.

3 Q And then there was asphalt again on the
4 south side against the city street on the south side;
5 is that right?

6 A Correct.

7 Q Okay.

8 So when you were telling me that your foot
9 was caught between the rail and the asphalt, was your
10 foot caught on the street side between the edge of the
11 asphalt and the rail, or was it caught on the inside,
12 between the two rails?

13 A I am not exactly sure where it was caught.

14 Q It was caught somewhere between the edge of
15 the asphalt and the rail?

16 A Correct.

17 Q And then with the train continuing to move,
18 that severed your foot.

19 Is that right?

20 A Correct.

21 Q Mr. Nixon, I am going to show you some
22 photographs now.

23 I will ask you some questions about them.
24 They may or may not refresh your recollection about
25 the accident or where it happened.

1 Correct?

2 A Correct.

3 Q And by the way, 19th Street, as of April
4 27th, 1997, was a two-way street with both eastbound
5 and westbound traffic?

6 A Correct.

7 Q So when you were holding on to that rail
8 car on the north side, you were actually being pulled
9 along on your bicycle against traffic.

10 You were going east while you were in the
11 westbound lane.

12 Correct?

13 A Correct.

14 Q I will show you now what has been marked as
15 R. Nixon Deposition Exhibit 4.

16 Does that appear to be a photograph of the
17 conditions as they existed on April 27th, 1997, at the
18 intersection of 19th Street and Sassafras Street?

19 A I am not sure.

20 Because the train was going over it.

21 Q So you can't say for sure?

22 A Correct.

23 Q Does this appear to be a photograph,
24 though, of the Sassafras Street intersection of 19th
25 Street?

1 A Correct.

2 Q Showing you now what has been marked R.

3 Nixon Deposition Exhibit 11.

4 Is that yet another photograph looking
5 generally in a northerly direction from somewhere in
6 the vicinity of the Sassafras Street intersection with
7 19th Street?

8 A Yes.

9 Q Is that right?

10 A Yes.

11 Q Are you able by looking at any of these
12 photographs, R. Nixon Deposition Exhibit 3 through 11,
13 to locate the point where your foot became stuck
14 between the asphalt -- the end of the asphalt and the
15 rail?

16 A No.

17 I am not exactly sure.

18 Q Okay.

19 Are you able to, by looking at any of these
20 photographs, identify the reason why you fell off your
21 bike?

22 A No.

23 I can't.

24 Q This question is for Mr. Solymosi, so we
25 clear something up on the record.

Tab G
Excerpts of Deposition of
M. Eugene Pandlis (1/12/07)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3
4 -----
5 ROBIN NIXON,

6 Plaintiff,

CIVIL ACTION NO.
05-101-ERIE

7 v.

8 NORFOLK SOUTHERN CORPORATION
9 and
NORFOLK SOUTHERN RAILWAY COMPANY, INC.,

10 Defendants.
11 -----

12 DEPOSITION UPON ORAL EXAMINATION
13 OF M. EUGENE PANDLIS,
14 TAKEN ON BEHALF OF THE PLAINTIFF

15 Norfolk, Virginia

16 January 12, 2007

17
18 Appearances:

19 SEGEL & SOLYMOSI

20 By: TIBOR R. SOLYMOSI, ESQUIRE (via telephone)
Counsel for the Plaintiff

21 MacDONALD, ILLIG, JONES & BRITTON, LLP

22 By: ROGER H. TAFT, ESQUIRE
23 Counsel for the Defendants
24
25

1 railroad, Norfolk & Western Railroad?

2 A. No.

3 Q. Okay. Now, I'm confused. Were you
4 employed by both?

5 A. No, I was employed by Norfolk Southern
6 Corporation and I did work as a claim agent, as agent for
7 Norfolk Southern Railway Company when it -- or Norfolk &
8 Western Railway Company until it was through merger
9 acquisition in 1998 with Norfolk Southern Railway
10 Company, and I've continued to do work for Norfolk
11 Southern Railway Company as agent for Norfolk Southern
12 Corporation.

13 Q. Okay. Just so that I understand you then,
14 then you actually were with Norfolk & Western up until
15 the merger with Norfolk and Southern? Is that correct?

16 A. No.

17 MR. TAFT: He testified that he became an
18 employee of Norfolk Southern Corporation in 1983, which
19 is prior to the merger.

20 MR. SOLYMOSI: Right.

21 MR. TAFT: Norfolk Southern Corporation, as
22 we've indicated with our discovery responses, is the
23 parent corporation that owns the shares of Norfolk
24 Southern Railway Company. So he became an employee of
25 Norfolk Southern Corporation in 1983, before the merger.

1 MR. SOLYMOSI: Okay.

2

3 BY MR. SOLYMOSI:

4 Q. Did you have any occasion to be involved at
5 all with the West 19th Street track operations prior to
6 the 1998 merger?

7 A. To be involved with the operations?

8 Q. On the West 19th Street tracks.

9 A. Are you talking about with the movement of
10 trains, cars? I'm not sure I understand.

11 Q. In any manner whatsoever were you involved
12 with Norfolk & Western's rail track operations from
13 between 1983 and 1998 while you were an employee of
14 Norfolk Southern Corporation?

15 A. No. I did not work in that area.

16 Q. Okay. But prior to that, when you were
17 part of Norfolk & Western --

18 A. Uh-huh.

19 Q. -- prior to 1983 --

20 A. Yes.

21 Q. -- did you have any occasion to be involved
22 with the -- any of the track operations on West 19th
23 Street?

24 A. No.

25 Q. In Erie.

1 BY MR. SOLYMOSI:

2 Q. I'd like to direct your attention to
3 interrogatory three. The answer that was provided
4 indicated that Norfolk Southern was the owner of tracks
5 and a limited right of way. What is the limited right of
6 way? Can you define that for me?

7 A. The limited right of way is the rails
8 themselves. And the ties.

9 Q. So would it encompass the area just from
10 the end of the tie to the other end of the tie,
11 basically? That's the right of -- the limited right of
12 way you're referring to?

13 A. Yes.

14 Q. Okay. In your answer to number four, you
15 stated that Norfolk Southern effective -- well, I
16 understand at the time of Mr. Nixon's accident Norfolk &
17 Western had operated those tracks, but you said effective
18 September 1, 1998, that Norfolk Southern Railway Company
19 maintained the railroad tracks and the limited right of
20 way.

21 MR. TAFT: Let me pose an objection, and
22 it's purely for the point of clarification. First of
23 all, Mr. Pandlis did, as you indicated earlier, sign the
24 affidavit verifying these answers to interrogatories, you
25 know, some based on his knowledge and some based on

1 personal knowledge or on information provided by others
2 that I reasonably believe to be true and correct.

3 Q. Okay. Well, before that you did say that
4 they are true and correct based on your personal
5 knowledge or information provided by others.

6 MR. TAFT: No, no, he didn't. As a matter
7 of fact --

8 MR. SOLYMOSI: You believed them to be true
9 and correct. That's what your affidavit said. And --

10 MR. TAFT: Mr. Solymosi, you quoted from
11 his affidavit earlier and he's just quoted again.

12 MR. SOLYMOSI: Correct.

13 MR. TAFT: So that's what he said. This is
14 a proper verification of these answers.

15

16 BY MR. SOLYMOSI:

17 Q. Okay. So let's get back to this answer.
18 How is it that you know that Norfolk and Southern Railway
19 maintained the railroad tracks and the limited right of
20 way in September of 1998?

21 A. Through merger acquisition documents when
22 Norfolk & Western Railway Company was merged into Norfolk
23 Southern Railway Company.

24 Q. Okay. And what did you find in those
25 documents to indicate that Norfolk Southern maintained

1 the tracks and limited right of way?

2 A. I did not see anything in those documents
3 that indicated such. Those were merger documents
4 strictly addressing the issue of Norfolk & Western
5 Railway Company, now being merged into Norfolk Southern
6 Railway Company.

7 Q. Well, I'm trying to understand how you knew
8 that Norfolk and Southern maintained that limited right
9 of way. Are you saying there's nothing in the documents
10 that would have told you that? How did you arrive at
11 that knowledge? How did you provide that? Did you
12 provide that information to Mr. Taft for this answer?

13 A. The Norfolk & Western Railway Company was
14 the initial owner of the track. By virtue of the fact
15 that it was merged through acquisition into Norfolk
16 Southern Railway Company would have me to believe to be
17 true that they owned the tracks as of September 1st,
18 1998.

19 Q. Well, is it generally in the railroad
20 business -- is that how it goes, that whoever is the
21 owner of the track would be responsible to maintain the
22 track and a limited right-of-way area?

23 A. Generally speaking, the Norfolk and -- the
24 Norfolk Southern Railway Company, if they own the track,
25 they maintain the track as well.

1 Q. And a limited right of way?

2 A. True.

3 Q. Okay.

4 A. The limited right of way being the rails
5 and the ties.

6 Q. What about the pavement over the ties?

7 A. Well, if it is over the ties, the pavement
8 would be part of the railway company's maintenance.

9 Q. Okay.

10 A. But only over the ties.

11 Q. Right. Well, would you agree with me that
12 Norfolk & Western Railway Company at the time of Mr.
13 Nixon's accident would have maintained that same area?
14 Would that be correct?

15 MR. TAFT: Object to the form of the
16 question. When you say, "same area," what do you mean?

17 MR. SOLYMOSI: The limited right-of-way
18 area we're talking about.

19 A. I believe to be true that Norfolk & Western
20 Railway Company would have maintained the rails and the
21 ties and the pavement over the ties.

22

23 BY MR. SOLYMOSI:

24 Q. Okay. Could you move to number six?

25 A. Okay.

1 existence prior to Mr. Nixon's accident or after?

2 MR. TAFT: For the record, Mr. Solymosi,
3 all those documents that Mr. Pandlis just referenced were
4 produced to you pursuant to request number nine of your
5 first set of requests for production. And all of them
6 are dated -- I'm looking at the response -- prior to
7 April 27, 1997.

8 MR. SOLYMOSI: Okay. Thank you.

9
10 BY MR. SOLYMOSI:

11 Q. When this merger took place, in addition to
12 the employees becoming technically Norfolk Southern
13 employees, you know, that were formerly with Norfolk
14 Western, and the track facilities, were there other
15 facilities of Norfolk Western that were merged into
16 Norfolk Southern? And I'm going to ask you specifically
17 the following: The safety department of Norfolk
18 Southern. Was that the same safety department as Norfolk
19 Western or were there different departments?

20 A. I think maybe to help simplify things here
21 for you, everything that was in existence on Norfolk &
22 Western Railway Company as of September the 1st became
23 acquired by Norfolk Southern Railway Company, so there,
24 literally speaking, were no changes.

25 Q. So they just basically just stepped right

1 into the shoes of Norfolk Western with all of the same
2 facilities being in place?

3 A. Yeah. Everything that was under the
4 control of Norfolk & Western Railway Company essentially
5 became the property of Norfolk Southern Railway Company,
6 so there weren't really any significant changes of any
7 sort.

8 Q. Well, did Norfolk & Western have a safety
9 department prior to the merger?

10 A. Yes.

11 Q. And was that the same safety department
12 that existed after the merger as far as its location goes
13 and its records?

14 A. That is correct.

15 Q. Where is that safety department located?

16 A. It's headquartered in Roanoke, Virginia.

17 Q. And who is in charge of the safety
18 department now?

19 A. I don't know.

20 Q. Do you know who was in charge of the safety
21 department at the time of Mr. Nixon's accident?

22 A. No.

23 Q. When you were answering these
24 interrogatories or providing the information, didn't you
25 go to the safety department to get information?

1 is that your answer or is that Mr. Taft's answer?

2 MR. TAFT: Well, the -- once again, the
3 answer to interrogatory number one states that --

4 MR. SOLYMOSI: I understand that.

5 MR. TAFT: Well, then when you talk about
6 whether it's his answer or my answer, refer to the answer
7 to interrogatory number one.

8

9 BY MR. SOLYMOSI:

10 Q. Did you provide that information for the
11 answer or did Roger provide the information for that
12 answer?

13 A. The information -- the information I had
14 from the police department report was what I sent to Mr.
15 Taft. Now, I understood -- it's my understanding that
16 the -- the street is owned and maintained by the City of
17 Erie. Norfolk & Western Railway Company owned the rails
18 and the ties and the pavement over it. That's my
19 understanding of the information provided. The response
20 is the response Mr. Taft put together there. I did not
21 put that response together.

22 Q. Okay.

23 A. But it's based on that understanding.

24 Q. Your answer to 14. You had indicated in
25 your answer that Norfolk Southern -- I'm not sure who

Tab H
Excerpts of Deposition of
Timothy J. Price (5/23/06)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,)
)
Plaintiff,)
)
-vs-) CIVIL ACTION
) NO. 05-101 ERIE
NORFOLK SOUTHERN CORPORATION)
and NORFOLK SOUTHERN RAILWAY)
COMPANY, INC.,)
)
Defendants.)

DEPOSITION OF: TIMOTHY J. PRICE

DATE: May 23, 2006
Tuesday, 12:45 p.m.

LOCATION: Segel & Solymosi
818 State Street
Erie, PA 16501
814-454-1500

TAKEN BY: Plaintiff

REPORTED BY: Toni Rennebeck, RPR
Notary Public
NMR Reference No. 052306B

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1 actual engineer.

2 Q. Kind of like an apprenticeship program or --

3 A. Yes.

4 Q. Okay. Did you receive a certification?

5 A. Yes, I did.

6 Q. And what is that certification?

7 A. A locomotive engineer.

8 Q. Do they give you a certificate, or how does that
9 work?

10 A. We have cards we carry.

11 Q. Are you familiar with the term physical
12 characteristics of the territory with respect to
13 an engineer?

14 A. Yes.

15 Q. Could you explain to me what that means to you?

16 A. Physical characteristics are the terrain grades,
17 road crossings, signals in relationship to like
18 the territory you're running on.

19 Q. Would the territory include any other things
20 such as what's maybe adjacent to the railroad
21 tracks in terms of a residential neighborhood or
22 a roadway that's in the same area as the tracks
23 like on West 19th Street?

24 A. I'm not sure what you mean by roadway.

25 Q. On West 19th Street the tracks we understand

1 went down the middle of West 19th Street; is
2 that correct?

3 A. Yes.

4 Q. And there was pavement between the rails and
5 there was blacktop pavement north and south of
6 the rails all the way to the curbs of West 19th
7 Street.

8 A. Yes.

9 Q. So I'm trying to determine where the territory
10 stops and starts so to speak.

11 You have to be familiar with the
12 territory; correct?

13 A. Yes.

14 Q. Do you need to be familiar with the territory
15 between the curbs on the north and south side of
16 19th Street? Would that include the territory?

17 A. No. As an engineer my territory in terms of
18 characteristics are the rail, the grade, the
19 signals. That's what the term physical
20 characteristics falls under.

21 Q. Okay. Could you tell me what your
22 responsibilities are as an engineer or what they
23 were as an engineer at the time of this
24 accident?

25 A. Well, until I was aware that there was even an

1 Q. Well, let's be specific to West 19th Street.

2 A. Okay.

3 Q. You know that there's a paved roadway on roughly
4 the center of which your rails travel.

5 A. Uh-huh.

6 Q. Are you aware of what the characteristics of the
7 neighborhood were at the time of Robin Nixon's
8 accident?

9 A. I'm not sure what you mean by characteristics of
10 the neighborhood.

11 Q. Well, was it a residential neighborhood?
12 Commercial neighborhood? Was it out in the
13 boonies where there's just ballast stone and
14 railroad ties?

15 Were you familiar with the
16 surroundings of the area that the train was
17 passing through in that area from State Street
18 to Cranberry Street?

19 A. Yeah, there were some homes and a couple older
20 buildings that I remember.

21 Q. Did you ever observe any children in the area?

22 A. No, not that I can recall.

23 Q. Did you ever observe anyone on a bicycle in the
24 area?

25 A. No.

1 at.

2 Q. Okay. You indicated there that the train was
3 traveling 8 miles per hour; correct?

4 A. Correct.

5 Q. How do you know that?

6 A. By the speed indicator in the lead locomotive.

7 Q. Okay. Do you recall how many speed indicators
8 there were in the locomotive you were operating
9 that day?

10 A. Just one.

11 Q. And would that have been to your right on the
12 control -- what they call the control panel?

13 A. It would have been right on the center at the
14 top of the control stand.

15 Q. Okay. Would it have been visible to Mr. Glenn,
16 who was on the right-hand side of the cab?

17 A. No, it would not have.

18 Q. Okay. We have marked prior to this deposition
19 during Mr. Morgan's deposition his exhibit 4.
20 It's an Erie police report.

21 On the second page of the report, the
22 third paragraph up, could you just read that and
23 review it?

24 - - - -

25 (The witness reviewed the document.)

1 But I didn't tell him 15.

2 Q. Were you and Mr. Glenn the only people on the
3 train that day?

4 A. Yes.

5 Q. Did anyone contact you after this lawsuit was
6 filed to get any information from you in order
7 to answer the complaint that was filed in the
8 case?

9 A. No. The only person that I've talked to has
10 been Mr. Taft.

11 Q. Okay. Did you provide any information to him
12 with regard to the interrogatories that we
13 served upon your employer?

14 A. No.

15 Q. Did you provide any information regarding the
16 request for production of documents that we
17 served on your employer?

18 A. Would you repeat that one more time?

19 Q. In the discovery process we send out what's
20 called discovery, and we requested that some
21 documents be produced and we specified what we
22 wanted.

23 Did you provide any information in
24 that regard?

25 A. No, no, no.